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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC ALLEN HAULCY,

Defendant and Appellant.

D072701

(Super. Ct. No. SCN348873)

APPEAL from a judgment of the Superior Court of San Diego County, Harry M. Elias, Judge. Affirmed.

Jill Kent, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Eric Haulcy of felony driving under the influence of alcohol causing injury (Veh. Code, § 23153, subd. (a); count 1) and driving with a blood alcohol level of .08 or greater causing injury (Veh. Code, § 23153, subd. (b); count 2). As to both

counts the jury found true allegations that Haulcy personally inflicted great bodily injury on three people (Pen. Code, §§ 12022.7, subd. (a), 1192.7, subd. (c)(8)) and caused bodily injury or death to multiple victims (Veh. Code, § 23558). Haulcy admitted a strike prior (Pen. Code, § 667, subds. (b)-(i)), a serious felony prior conviction (Pen. Code, § 667, subd. (a)(1)) and two prison priors (Pen. Code, § 667.5, subd. (b)).

The court sentenced Haulcy to a determinate term of 22 years in prison.

Haulcy appeals challenging only the denial of his pretrial motion to suppress the warrantless blood draw evidence. As we will discuss, the trial court found, and the evidence supports the finding, exigent circumstances justified the police decision not to take the additional time necessary to seek a warrant. The exigent circumstances shown by this record are very similar to those found to exist in *Schmerber v. California* (1966) 384 U.S. 757 (*Schmerber*). Following the case-by-case analysis mandated by *Missouri v. McNeely* (2013) 569 U.S. 141 (*McNeely*), we will conclude the exigent circumstances arising from the horrendous accident, the hospitalization of Haulcy and the time required to investigate the accident and address the needs of injured people. The evidence showed that approximately two hours of additional time would have been required to obtain a telephonic search warrant. Under the totality of circumstances, the warrantless seizure of Haulcy's blood was justified.

## STATEMENT OF FACTS

This appeal does not challenge the sufficiency or the admissibility of the evidence to support the convictions except for the denial of the pretrial motion to suppress evidence. Accordingly, we will omit a detailed description of the accident, injuries and

evidence produced at the jury trial. Instead, we will focus on the evidence produced at the motion to suppress evidence.

The accident causing injuries occurred in the City of Oceanside at around 5:30 p.m. At the hearing on the motion to suppress, Police Lieutenant Lopez testified. He arrived at the scene around 6:30 p.m. He described it as a "massive scene." Haulcy's car had crossed over the median and collided head on with another car. Haulcy's car was upside down and firefighters had cut the roof of the car to get him out. Haulcy was severely injured and was flown to Scripps Hospital in La Jolla. The other car was severely damaged and the occupants badly injured. At one point police thought one of the passengers might die. There were traffic problems and debris "everywhere." Other officers had arrived before Lopez.

Because Haulcy was badly injured and taken from the scene, officers could not perform any sobriety tests or determine if he was impaired when he drove across traffic into oncoming cars. Witness statements relayed to Lopez indicated Haulcy was impaired by alcohol while driving.

Lopez testified that about 90 minutes after the accident had occurred, he directed another officer to go to the hospital and obtain a blood draw. The blood evidence was deemed necessary because Haulcy had been removed from the scene and there was no opportunity to directly observe or test him. Lopez directed the officer to obtain a phlebotomist to conduct the blood draw.

Lopez explained he did not direct the officer to obtain a warrant based on the 90-minute delay already existing and his knowledge it would take at least two hours just

to obtain a telephonic search warrant, an estimate the trial court found to be consistent with the court's own experience.

Lopez was also concerned that the delays would mean the blood would be drawn more than three hours after the accident, thus depriving them of the statutory presumption which would make it difficult to relate back to the blood alcohol level at the time of driving. Lopez also believed the implied consent law would allow a blood draw from an unconscious driver (who did not object).

When the phlebotomist arrived at the hospital Haulcy was being examined by medical personnel. After about 30 minutes, she was allowed to draw blood. She testified the blood was drawn at 7:27 p.m.

The court declined to rule on the implied consent issue because no arrest was made before the blood was drawn. The court resolved the conflict in the evidence regarding timing, accepting the officer's time estimate that 90 minutes had elapsed during the initial response and investigation of the accident. The court found police had probable cause to believe alcohol was involved and that police reasonably believed it would have taken two hours to obtain a warrant.

The trial court concluded that there were exigent circumstances which justified failure to seek a warrant.

## DISCUSSION

In this appeal, as in the trial court, the People have argued that blood may be drawn from an unconscious driver under California's implied consent law and that police acted in good faith in relying on the statute. The applicability of the implied consent law

in circumstances such as this is currently before our Supreme Court in *People v. Arredondo* (2016) 245 Cal.App.4th 186 (rev. granted June 8, 2016, S233582). Further, the trial court declined to rule on those issues in part because there was no evidence Haulcy was under arrest when the blood was obtained. We will also decline to address the implied consent law's limitations or the applicability of the good faith exception to the exclusionary rule.

#### A. Legal Principles

When we review a trial court decision on a motion to suppress evidence we apply a two-step process. First, we apply the substantial evidence standard to determine the historical facts. Once we ascertain the factual basis for the motion we apply our independent judgment to the legal significance of such facts. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) We will defer to the factual findings of the trial court if such findings are supported by substantial evidence. (*People v. Camacho* (2000) 23 Cal.4th 824, 830.)

It is well established that searches or seizures conducted without warrants are presumed to be invalid unless there is a recognized exception to the warrant requirement. (*United States v. Robinson* (1973) 414 U.S. 218, 224.) One of the established exceptions to the warrant requirement exists where police are acting under exigent circumstances. (*Kentucky v. King* (2011) 563 U.S. 452, 460.) One example of exigent circumstances is where police must act quickly to prevent the destruction of evidence. (*Cupp v. Murphy* (1973) 412 U.S. 291, 296.)

In *Schmerber, supra*, 384 U.S. 757, 770, the court recognized that the natural dissipation of alcohol in a person's blood could be an exigent circumstance requiring taking blood without consent or a warrant. The court accepted that alcohol in a person's blood stream disappears at a fairly predictable rate after drinking. Thus, delays in obtaining blood samples may result in lost evidence which is relevant to whether the person was under the influence of alcohol while driving. (*People v. Thompson* (2008) 38 Cal.4th 811, 825.)

In order to determine if police acted reasonably in relying on exigent circumstances we must look to the totality of the circumstances. (*Ohio v. Robinette* (1996) 519 U.S. 33, 39.)

In *McNeely, supra*, 569 U.S. 141, the court revisited the question of what constitutes exigent circumstances justifying warrantless searches in drunk driving cases. In that case the state contended there should be a per se rule that the dissipation of alcohol in the bloodstream should be justification for avoiding the warrant process. The facts of *McNeely* involved a routine case where there was adequate time to get a warrant. The Missouri court, and ultimately the Supreme Court, concluded alcohol dissipation could constitute exigent circumstances in a given case, but declined to create a per se rule. (*Id.* at pp. 157-158.)

The court in *McNeely* considered its prior opinion in *Schmerber, supra*, 384 U.S. 757, and again concluded it was reasonable in that case for police to act without a warrant. The suspect there had been injured in an accident and taken to the hospital. Delays in dealing with the accident and fact of his hospitalization, in that case justified

the need to act without a warrant. Ultimately, the court in *McNeely* held that exigent circumstances in drunk driving cases must be decided on a case-by-case basis, looking to determine whether, in light of greater availability of search warrants for police such circumstances justified acting without a warrant. No hard and fast rule was created by the court. (*McNeely, supra*, 569 U.S. at p. 158.)

In *People v. Toure* (2015) 232 Cal.App.4th 1096, 1103-1105, Division Two of our court addressed exigent circumstances arising from a traffic accident, its investigation and the problems with getting the defendant secured before obtaining a blood sample. The court found the problems facing police in the processing of the suspect made it reasonable for police to obtain a blood sample without first seeking a warrant. The court found the warrantless search to be reasonable under both *Schmerber, supra*, 384 U.S. 757 and *McNeely, supra*, 569 U.S. 141.

## B. Analysis

The trial court found the police testimony to be credible and resolved any differences in evidence of timing in favor of the officer's testimony. The facts presented thus show substantial delays experienced by police in addressing the damage and chaos from the accident. They had no opportunity to observe or question Haulcy at the scene since he was air lifted to the hospital to deal with his significant injury. It took around 90 minutes for police to sort out the facts enough to acquire probable cause to suspect Haulcy was driving under the influence of alcohol. The commander at the scene was aware of the additional delay that would be required in San Diego County in the process of obtaining a telephonic warrant. The court found the testimony credible. An officer

was dispatched to the hospital to obtain a blood sample. It appears police diligently and continuously pursued their investigation, but were delayed by the circumstances of a difficult accident and the injury and hospitalization of the suspect.

Haulcy cites *People v. Meza* (2018) 23 Cal.App.5th 604 in support of his contention police were not justified in relying on exigent circumstances. *Meza* is distinguishable from the facts presented here. In that case police were able to observe and at least briefly speak to the suspect at the scene. When the investigating officer went to the hospital, she apparently engaged in several activities, including interviewing witnesses and filling out paperwork. (*Id.* at pp. 611-613.) The appellate court concluded she could have had other colleagues do her interviews and paperwork and would therefore have had time to apply for a warrant. That is not the situation presented here.

In the present case the record does not show a lack of diligence by police or that there were alternatives which would have given them time to apply for a warrant. As best we can tell, the record in *People v. Meza, supra*, 23 Cal.App.5th 604 does not address the time constraints of the warrant process, as was done here.

Our case is more akin to *People v. Toure, supra*, 232 Cal.App.4th 1096. We believe the court there correctly applied the totality of circumstance test to the facts presented and correctly found police acted reasonably. We agree with the analysis of the *Toure* opinion.

While there was a dispute as to the timing of various events in this case, the trial court resolved the dispute in favor of the officer's testimony. There is sufficient substantial evidence to support the finding. Based on the trial court's factual findings we



are satisfied the police in this case acted properly in relying on exigent circumstances instead of seeking a warrant.

#### DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

BENKE, J.

AARON, J.